



Advisory Opinion 08-012

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2007). It is based on the facts and information available to the Commissioner as described below. All public data the Commissioner relied upon to issue this opinion are available for public inspection and copying at the office of the Information Policy Analysis Division (IPAD), unless the data have been disposed of in compliance with the state Records Management Act.

Facts and Procedural History:

On April 11, 2008, IPAD received a letter, dated April 9, 2008, from Elizabeth Sobotka, on behalf of her client, Plat Systems Services, a division of Regional MLS of Minnesota, Inc. In her letter, Ms. Sobotka asked the Commissioner to issue an advisory opinion about her client's rights regarding certain data Carver County maintains. IPAD requested clarification, which Ms. Sobotka provided on April 18, 2008.

IPAD, on behalf of the Commissioner, wrote to David Hemze, Carver County Administrator, in response to Ms. Sobotka's request. The purposes of this letter, dated April 23, 2008, were to inform him of Ms. Sobotka's request and to ask him to provide information or support for the County's position. Thomas W. Haines, Assistant County Attorney, responded, in a letter dated May 15, 2008.

A summary of the facts follows. In a letter dated December 12, 2007, Plat Systems asked Carver County for "a cost justification" of its \$15.00 charge per plat map.

In a letter dated January 3, 2008, Mr. Haines responded:

Carver County maps are a graphical, spatial representation of data compiled from the records of the Carver County Recorder, Carver County Auditor and Carver County Public Works. These maps include parcel boundaries, transportation corridor centerlines and rights-of-way, water boundaries and Auditor Parcel Identification (PID) numbers. Maintenance of the maps is continuous as new parcels are created through the minor-subdivision process and subdivision plats, roads are realigned and right-of-way acquired and vacated, and as water boundaries change over time.

In the year 2006 the GIS costs totaled \$47,379.00 and there were 902 maps sold at \$15.00 per map, representing Carver County's expenditure in 2006 at \$33,849.00. As of mid December 2007, the costs totaled \$61,557.00 and there were 850 maps sold at \$15.00 per map, representing Carver County's expenditure at \$48,807.00. Please note that these costs only represent base salary; cost of fringe benefits is not included. Based on current

and past costs, we believe that the \$15.00 fee per map is a minimal expense and are thus in compliance with Minn. Stat. § 13.03 subd. 3 (d).

Plat Systems wrote in response to Carver County, in a letter dated March 5, 2008, asking again for a justification of its plat map charge:

Carver County has provided no information to substantiate a contention that the actual or reasonable cost to provide the plat maps to Plat Systems in electronic form is \$15.00 per map. Carver County's response . . . provided limited data regarding its plat maps for the years 2006 and 2007. The data included Carver County's volume of maps sold, its total revenue from those map sales, and its annual cost of maintaining the maps. It appears Carver County justifies the cost to Plat based on its cost to maintain its system; that is not a permissible basis, as the county would maintain the system regardless whether anyone requested the data under the MGDPA. Carver County's response did not provide any explanation of the \$15.00 per map fee charged to fulfill a plat map data request. Carver County provided neither an adequate fee schedule, nor any breakdown of the actual reasonable costs to create the information such as labor, mailing or material costs.

Issue:

Based on Ms. Sobotka's request, the Commissioner will address the following issue:

Did Carver County comply with Minnesota Statutes, Chapter 13, in its response to a December 12, 2007, request for the cost justification for its plat map pricing?

Discussion:

Pursuant to Minnesota Statutes, section 13.03, government data are public unless otherwise classified.

When an individual requests copies of data of which s/he is not the subject, pursuant to Minnesota Statutes, section 13.03, subdivision 3(c), the government entity may charge the "actual costs of searching for and retrieving government data, including the cost of employee time, and for making, certifying, compiling, and electronically transmitting the copies." In addition, Minnesota Rules Part 1205.0300, subpart 4, provides that an entity, in determining a reasonable fee, shall be guided by the following: cost of materials; cost of labor, any schedule of standard copying charges; any special costs; and mailing costs.

Further, according to section 13.03, subdivision 3(e):

The responsible authority of a government entity that maintains public government data in a computer storage medium shall provide to any person making a request under this section a copy of any public data contained in that medium, in electronic form, if the government entity can reasonably make the copy or have a copy made. . . . The entity may require the requesting person to pay the actual cost of providing the copy.

Mr. Haines did not provide any documentation of the County's actual and reasonable cost to provide an electronic copy of a plat map. (See Advisory Opinion 04-072 for further discussion.)

In addition to charging actual, reasonable costs to provide an electronic copy of data, sometimes a government entity may charge an add-on fee. Pursuant to Minnesota Statutes, section 13.03, subdivision 3(d):

When a request under this subdivision involves any person's receipt of copies of public government data that has commercial value and is a substantial and discrete portion of or an entire formula, pattern, compilation, program, device, method, technique, process, database, or system developed with a significant expenditure of public funds by the agency, the responsible authority may charge a reasonable fee for the information in addition to the costs of making, certifying, and compiling the copies. Any fee charged must be clearly demonstrated by the agency to relate to the actual development costs of the information. The responsible authority, upon request of any person, shall provide sufficient documentation to explain and justify the fee being charged.

As discussed above, pursuant to section 13.03, when an individual requests copies of data, the government entity may charge certain actual costs related to providing copies of the data. If the data have commercial value, and the request otherwise fulfills the criteria set forth under section 13.03, subdivision 3(d), the entity may charge an additional fee. However, the entity must be able to demonstrate that any such additional fee relates to the actual development costs of the information.

In his comments to the Commissioner, Mr. Haines described the County's on-going labor costs to update the data in its system. He did not provide any information about the County's initial development costs for the system, or how much of its initial costs it has recouped through an add-on fee, or how the current add-on fee relates to its development costs. The County must do so in order to meet its obligation to explain and justify an add-on fee under section 13.03, subdivision 3(d).

In 02-004, the Commissioner opined:

It is the Commissioner's opinion that when the Legislature adopted the commercial value add-on fee, it did not intend that a government entity recapture ongoing development/other costs beyond the initial development expenditure. In 1975, [Hennepin] County began the development of the PINS. However, the situation is not one in which the County's initial expenditure for development of the PINS occurred for 25 years (between 1975 and 2000), after which the County allowed the public access to the database. Rather, as the "1991 Property Information System (PINS) Data Base Product Pricing" document states, "...copies of and direct access to this information have been made available to commercial firms for many years." The County, in calculating the development cost for the PINS for the period 1975 through 2000, apparently included ongoing costs. The burden is on the County to "clearly demonstrate" that the add-on fee relates "to the actual development costs of the information." The County has not met that burden. Therefore, the County's charge is not appropriate.

Based on Mr. Haines' response, it appears the County calculates its add-on fee using its on-going labor costs to develop and maintain the plat map data, not its initial development costs for the system. Further, the County appears to calculate its costs to maintain its system based upon the number of plat maps it sells. In addition, Mr. Haines did not provide any documentation of the County's actual reasonable cost to provide an electronic copy of a plat map, so it is not evident how much of the \$15.00 charge is actual cost, and how much is add-on fee.

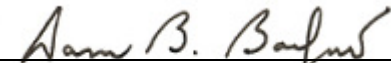
For these reasons, it is the Commissioner's opinion that the County has not met its obligation to explain and justify its \$15.00 per plat map charge.

Opinion:

Based on the facts and information provided, my opinion on the issue that Ms. Sobotka raised is as follows:

Carver County did not comply with Minnesota Statutes, Chapter 13, in its response to a December 12, 2007, request for the cost justification for its plat map pricing.

Signed:



Dana B. Badgerow
Commissioner

Dated:

May 30, 2008